

REFERENCE TITLE: **workers' compensation; unauthorized aliens**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# **SB 1334**

Introduced by  
Senators Pearce: Harper; Representatives Montenegro, Seel, Stevens

**AN ACT**

**AMENDING SECTION 23-901, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-901, Arizona Revised Statutes, is amended to  
3 read:

4 23-901. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Award" means the finding or decision of an administrative law  
7 judge or the commission as to the amount of compensation or benefit due an  
8 injured employee or the dependents of a deceased employee.

9 2. "Client" means an individual, association, company, firm,  
10 partnership, corporation or any other legally recognized entity that is  
11 subject to this chapter and that enters into a professional employer  
12 agreement with a professional employer organization.

13 3. "Co-employee" means every person employed by an injured employee's  
14 employer.

15 4. "Commission" means the industrial commission of Arizona.

16 5. "Compensation" means the compensation and benefits provided by this  
17 chapter.

18 6. "Employee", "workman", "worker" and "operative" means:

19 (a) Every person in the service of the state or a county, city, town,  
20 municipal corporation or school district, including regular members of  
21 lawfully constituted police and fire departments of cities and towns, whether  
22 by election, appointment or contract of hire.

23 (b) Every person in the service of any employer subject to this  
24 chapter, including ~~aliens and~~ minors legally or illegally permitted to work  
25 for hire, but not including a person:

26 (i) Whose employment is both ~~+~~

27 ~~(+)~~ casual ~~+~~

28 ~~(+)~~ AND not in the usual course of the trade, business or occupation  
29 of the employer.

30 (ii) WHO IS AN UNAUTHORIZED ALIEN. FOR THE PURPOSES OF THIS ITEM,  
31 "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL RIGHT OR  
32 AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED IN  
33 8 UNITED STATES CODE SECTION 1324a(h)(3).

34 (c) Lessees of mining property and their employees and contractors  
35 engaged in the performance of work which is a part of the business conducted  
36 by the lessor and over which the lessor retains supervision or control are  
37 within the meaning of this paragraph employees of the lessor, and are deemed  
38 to be drawing wages as are usually paid employees for similar work. The  
39 lessor may deduct from the proceeds of ores mined by the lessees the premium  
40 required by this chapter to be paid for such employees.

41 (d) Regular members of volunteer fire departments organized pursuant  
42 to title 48, chapter 5, article 1, regular firemen of any volunteer fire  
43 department, including private fire protection service organizations,  
44 organized pursuant to title 10, chapters 24 through 40, volunteer firemen  
45 serving as members of a fire department of any incorporated city or town or

1 an unincorporated area without pay or without full pay and on a part-time  
2 basis, and voluntary policemen and volunteer firemen serving in any  
3 incorporated city, town or unincorporated area without pay or without full  
4 pay and on a part-time basis, are deemed to be employees, but for the  
5 purposes of this chapter, the basis for computing wages for premium payments  
6 and compensation benefits for regular members of volunteer fire departments  
7 organized pursuant to title 48, chapter 5, article 1, or organized pursuant  
8 to title 10, chapters 24 through 40, regular members of any private fire  
9 protection service organization, volunteer firemen and volunteer policemen of  
10 these departments or organizations shall be the salary equal to the beginning  
11 salary of the same rank or grade in the full-time service with the city,  
12 town, volunteer fire department or private fire protection service  
13 organization, provided if there is no full-time equivalent then the salary  
14 equivalent shall be as determined by resolution of the governing body of the  
15 city, town or volunteer fire department or corporation.

16 (e) Members of the department of public safety reserve, organized  
17 pursuant to section 41-1715, are deemed to be employees. For the purposes of  
18 this chapter, the basis for computing wages for premium payments and  
19 compensation benefits for a member of the department of public safety reserve  
20 who is a peace officer shall be the salary received by officers of the  
21 department of public safety for their first month of regular duty as an  
22 officer. For members of the department of public safety reserve who are not  
23 peace officers, the basis for computing premiums and compensation benefits is  
24 four hundred dollars a month.

25 (f) Any person placed in on-the-job evaluation or in on-the-job  
26 training under the department of economic security's temporary assistance for  
27 needy families program or vocational rehabilitation program shall be deemed  
28 to be an employee of the department for the purpose of coverage under the  
29 state workers' compensation laws only. The basis for computing premium  
30 payments and compensation benefits shall be two hundred dollars per month.  
31 Any person receiving vocational rehabilitation services under the department  
32 of economic security's vocational rehabilitation program whose major  
33 evaluation or training activity is academic, whether as an enrolled attending  
34 student or by correspondence, or who is confined to a hospital or penal  
35 institution, shall not be deemed to be an employee of the department for any  
36 purpose. Any dividend which the department's vocational rehabilitation  
37 program may be entitled to receive from the state compensation fund because  
38 of a favorable loss experience for any policy period shall not revert to the  
39 state general fund but shall be applied to the department's current premium  
40 obligations for workers' compensation coverage for such program.

41 (g) Regular members of a volunteer sheriff's reserve, which may be  
42 established by resolution of the county board of supervisors, to assist the  
43 sheriff in the performance of the sheriff's official duties. A roster of the  
44 current members shall monthly be certified to the clerk of the board of  
45 supervisors by the sheriff and shall not exceed the maximum number authorized

1 by the board. Certified members of an authorized volunteer sheriff's reserve  
2 shall be deemed to be employees of the county for the purpose of coverage  
3 under the Arizona workers' compensation laws and occupational disease  
4 disability laws and shall be entitled to receive the benefits of these laws  
5 for any compensable injuries or disabling conditions which arise out of and  
6 occur in the course of the performance of duties authorized and directed by  
7 the sheriff. Compensation benefits and premium payments shall be based upon  
8 the salary received by a regular full-time deputy sheriff of the county  
9 involved for the first month of regular patrol duty as an officer for each  
10 certified member of a volunteer sheriff's reserve. This subdivision shall  
11 not be construed to provide compensation coverage for any member of a  
12 sheriff's posse who is not a certified member of an authorized volunteer  
13 sheriff's reserve except as a participant in a search and rescue mission or a  
14 search and rescue training mission.

15 (h) A working member of a partnership may be deemed to be an employee  
16 entitled to the benefits provided by this chapter upon written acceptance, by  
17 endorsement, at the discretion of the insurance carrier for the partnership  
18 of an application for coverage by the working partner. The basis for  
19 computing premium payments and compensation benefits for the working partner  
20 shall be an assumed average monthly wage of not less than six hundred dollars  
21 nor more than the maximum wage provided in section 23-1041 and is subject to  
22 the discretionary approval of the insurance carrier. Any compensation for  
23 permanent partial or permanent total disability payable to the partner shall  
24 be computed on the lesser of the assumed monthly wage agreed to by the  
25 insurance carrier on the acceptance of the application for coverage or the  
26 actual average monthly wage received by the partner at the time of injury.

27 (i) The sole proprietor of a business subject to this chapter may be  
28 deemed to be an employee entitled to the benefits provided by this chapter on  
29 written acceptance, by endorsement, at the discretion of the insurance  
30 carrier of an application for coverage by the sole proprietor. The basis for  
31 computing premium payments and compensation benefits for the sole proprietor  
32 shall be an assumed average monthly wage of not less than six hundred dollars  
33 nor more than the maximum wage provided by section 23-1041 and is subject to  
34 the discretionary approval of the insurance carrier. Any compensation for  
35 permanent partial or permanent total disability payable to the sole  
36 proprietor shall be computed on the lesser of the assumed monthly wage agreed  
37 to by the insurance carrier on the acceptance of the application for coverage  
38 or the actual average monthly wage received by the sole proprietor at the  
39 time of injury.

40 (j) A member of the Arizona national guard, Arizona state guard or  
41 unorganized militia shall be deemed a state employee and entitled to coverage  
42 under the Arizona workers' compensation law at all times while the member is  
43 receiving the payment of the member's military salary from the state of  
44 Arizona under competent military orders or upon order of the governor.  
45 Compensation benefits shall be based upon the monthly military pay rate to

1 which the member is entitled at the time of injury, but not less than a  
2 salary of four hundred dollars per month, nor more than the maximum provided  
3 by the workers' compensation law. No Arizona compensation benefits shall  
4 inure to a member compensable under federal law.

5 (k) Certified ambulance drivers and attendants who serve without pay  
6 or without full pay on a part-time basis are deemed to be employees and  
7 entitled to the benefits provided by this chapter and the basis for computing  
8 wages for premium payments and compensation benefits for certified ambulance  
9 personnel shall be four hundred dollars per month.

10 (l) Volunteer workers of a licensed health care institution may be  
11 deemed to be employees and entitled to the benefits provided by this chapter  
12 upon written acceptance by the insurance carrier of an application by the  
13 health care institution for coverage of such volunteers. The basis for  
14 computing wages for premium payments and compensation benefits for volunteers  
15 shall be four hundred dollars per month.

16 (m) Personnel who participate in a search or rescue operation or a  
17 search or rescue training operation that carries a mission identifier  
18 assigned by the division of emergency management as provided in section  
19 35-192.01 and who serve without compensation as volunteer state employees.  
20 The basis for computation of wages for premium purposes and compensation  
21 benefits is the total volunteer man-hours recorded by the division of  
22 emergency management in a given quarter multiplied by the amount determined  
23 by the appropriate risk management formula.

24 (n) Personnel who participate in emergency management training,  
25 exercises or drills that are duly enrolled or registered with the division of  
26 emergency management or any political subdivision as provided in section  
27 26-314, subsection C and who serve without compensation as volunteer state  
28 employees. The basis for computation of wages for premium purposes and  
29 compensation benefits is the total volunteer man-hours recorded by the  
30 division of emergency management or political subdivision during a given  
31 training session, exercise or drill multiplied by the amount determined by  
32 the appropriate risk management formula.

33 (o) Regular members of the Arizona game and fish department reserve,  
34 organized pursuant to section 17-214. The basis for computing wages for  
35 premium payments and compensation benefits for a member of the reserve is the  
36 salary received by game rangers and wildlife managers of the Arizona game and  
37 fish department for their first month of regular duty.

38 (p) Every person employed pursuant to a professional employer  
39 agreement.

40 (q) Members of the department of administration capitol police  
41 reserve, organized pursuant to section 41-794, are deemed to be employees.  
42 For the purposes of this chapter, the basis for computing wages for premium  
43 payments and compensation benefits for a member of the department of  
44 administration capitol police reserve who is a peace officer shall be the

1 salary received by officers of the department of administration for their  
2 first month of regular duty as an officer.

3 7. "General order" means an order applied generally throughout the  
4 state to all persons under jurisdiction of the commission.

5 8. "Heart-related or perivascular injury, illness or death" means  
6 myocardial infarction, coronary thrombosis or any other similar sudden,  
7 violent or acute process involving the heart or perivascular system, or any  
8 death resulting therefrom, and any weakness, disease or other condition of  
9 the heart or perivascular system, or any death resulting therefrom.

10 9. "Insurance carrier" means the state compensation fund and every  
11 insurance carrier duly authorized by the director of insurance to write  
12 workers' compensation or occupational disease compensation insurance in the  
13 state of Arizona.

14 10. "Interested party" means the employer, the employee, or if the  
15 employee is deceased, the employee's estate, the surviving spouse or  
16 dependents, the commission, the insurance carrier or their representative.

17 11. "Mental injury, illness or condition" means any mental, emotional,  
18 psychotic or neurotic injury, illness or condition.

19 12. "Order" means and includes any rule, direction, requirement,  
20 standard, determination or decision other than an award or a directive by the  
21 commission or an administrative law judge relative to any entitlement to  
22 compensation benefits, or to the amount thereof, and any procedural ruling  
23 relative to the processing or adjudicating of a compensation matter.

24 13. "Personal injury by accident arising out of and in the course of  
25 employment" means any of the following:

26 (a) Personal injury by accident arising out of and in the course of  
27 employment.

28 (b) An injury caused by the wilful act of a third person directed  
29 against an employee because of the employee's employment, but does not  
30 include a disease unless resulting from the injury.

31 (c) An occupational disease which is due to causes and conditions  
32 characteristic of and peculiar to a particular trade, occupation, process or  
33 employment, and not the ordinary diseases to which the general public is  
34 exposed, and subject to section 23-901.01.

35 14. "Professional employer agreement" means a written contract between  
36 a client and a professional employer organization:

37 (a) In which the professional employer organization expressly agrees  
38 to co-employ all or a majority of the employees providing services for the  
39 client. In determining whether the professional employer organization  
40 employs all or a majority of the employees of a client, any person employed  
41 pursuant to the terms of the professional employer agreement after the  
42 initial placement of client employees on the payroll of the professional  
43 employer organization shall be included.

44 (b) That is intended to be ongoing rather than temporary in nature.

1 (c) In which employer responsibilities for worksite employees,  
2 including hiring, firing and disciplining, are expressly allocated between  
3 the professional employer organization and the client in the agreement.

4 15. "Professional employer organization" means any person engaged in  
5 the business of providing professional employer services. Professional  
6 employer organization does not include a temporary help firm or an employment  
7 agency.

8 16. "Professional employer services" means the service of entering into  
9 co-employment relationships under this chapter to which all or a majority of  
10 the employees providing services to a client or to a division or work unit of  
11 a client are covered employees.

12 17. "Special order" means an order other than a general order.

13 18. "State compensation fund" includes the state compensation fund,  
14 accident benefit fund and occupational disease compensation fund in existence  
15 on January 2, 1969 and shall thereafter include all funds under the  
16 jurisdiction of the board of directors of the state compensation fund which  
17 have been derived from the assessment of premiums, interest, penalties and  
18 investment earnings for the payment of all workers' compensation and  
19 occupational disease compensation benefits.

20 19. "Weakness, disease or other condition of the heart or perivascular  
21 system" means arteriosclerotic heart disease, cerebral vascular disease,  
22 peripheral vascular disease, cardiovascular disease, angina pectoris,  
23 congestive heart trouble, coronary insufficiency, ischemia and all other  
24 similar weaknesses, diseases and conditions, and also previous episodes or  
25 instances of myocardial infarction, coronary thrombosis or any similar  
26 sudden, violent or acute process involving the heart or perivascular system.

27 20. "Workers' compensation" means workmen's compensation as used in  
28 article XVIII, section 8, Constitution of Arizona.